IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7028 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADARSH CHEMICALS & FERTILIZERSLIMITED - Petitioner(s)

Versus

DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE & 3 - Respondent(s)

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Appearance :

MR RS SANJANWALA for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1 - 2.
Mr. HM Prachhak, AGP for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/12/2005

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India the petitioner has challenged the issuance of order/notice dated 21.1.2003 of respondent No.4, i.e., City Mamlatdar, Surat, trying to recover an amount of Rs. 1,26,000 and directing

the petitioner to deposit/pay the said amount on or before 30th January 2003. It appears from the record that the said notice came to be issued under Section 158 of the Bombay Land Revenue code read with Rule 118 of the Bombay Land Revenue Rules for recovery of the amount pursuant to the order passed by the Deputy Director General of Foreign Trade.

2. It was the contention on behalf of the petitioner that against the order passed by the Deputy Director General of Foreign Trade which was sought to be executed the petitioner has preferred an appeal before the Additional Director General of Foreign Trade and also submitted a stay application. However before even the stay application could be heard the respondent No.4 has initiated proceedings and therefore the petitioner has preferred the present Special Civil Application. It is required to be noted that there were subsequent developments with regard to the proceedings pending before the Additional Director General of Foreign Trade and the appeal came to be dismissed by the Appellate Authority on the ground that the petitioner had not produced certain documents before the Adjudicating Authority though directed earlier and against which the petitioner preferred Special Civil Application No. 22189 of 2005 before this Court and this Court has passed the order directing the petitioner to appear before the adjudicating authority and produce the documents on 12.12.2005 and the Adjudicating

Authority was thereafter directed to submit the report before the Appellate Authority and the Appellate Authority in turn was directed to consider the same afresh. By so directing, this Court has quashed and set aside the order passed by the Appellate Authority by dismissing the appeal. The operative portion of the order, passed by this Court, reads as under;

> [i] The petitioner is directed to produce all the necessary documents available with the petitioner like Shipping Bills, Bank Realisation Certificate, DEEC Book (Import and Export) for verification before the Adjudicating Authority – respondent No.3 on 12/12/2005 and the respondent No.3 shall issue acknowledgment receipt for the acceptance of the same.
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> [ii] The respondent No.3 will give an opportunity of personal hearing to the petitioner on 20/12/2005, the date which is tentatively agreed between the parties and if for any reason, the said date is not convenient to the

Adjudicating Authority, the petitioner will be informed in writing and next date will be communicated to the petitioner by the said authority and shall obtain the signature of the petitioner. However, the said date should not be later than 15 days.

[iii] On receiving the necessary documents from the petitioner and after giving an opportunity of being heard to the petitioner, the authority shall forward its report to the Appellate Authority as expeditiously as possible but within a period of four weeks thereafter.

[iv] In view of the above directions and without considering into the larger question and legality and validity of the order passed by the authority, the impugned order passed by the appellate authority i.e. Additional Director General of

Foreign Trade dtd.7/9/2005 is hereby quashed and set aside and the appellate authority is directed to pass a fresh order in accordance with law and on merits, after considering the report that may be submitted by the Adjudicating Authority after due verification.

If under the law, the petitioner is entitled to have an opportunity of personal hearing by the appellate authority, the appellate authority shall give the same and shall pass appropriate order as aforesaid.

3. Now, in view of the fact that when the Appeal is pending before the Appellate Authority and this Court has passed the aforesaid order, the respondent No.4 should not have initiated the proceedings more particularly when the Stay Application submitted by the petitioner was pending. In the facts and circumstances of the case and having regard to the order passed by this Court in the aforesaid Special Civil Application, the Appellate Authority, i.e., Additional Director General of

Foreign Trade is directed to decide and dispose of the Stay Application submitted by the petitioner on before 15th February 2006 after giving opportunity of hearing to the petitioner considering the provisions of law if it is so provided and communicate the outcome of the said Stay Application to the petitioner. Until then, the respondent No.4 is restrained from proceeding further with the impugned notice dated 21.1.2003 issued under Section 152 of the Bombay Land Revenue Code and Rule 118 of the Bombay Land Revenue Rules and shall proceed further subject to the order that may be passed by the Appellate Authority on the said Stay Application. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.